

Message Text

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TO AMEMBASSY JAKARTA

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TAGS: EFIN, ETRD, EINU, ID

SUBJECT: DISPUTES, ARBITRATION AND THE BUSINESS CLIMATE
IN INDONESIA

REF: (A) EA/TIMBS TRANSMITTAL DTD 1/25/78;
(B) JAKARTA 7573;
(C) BARDACH-CHESKY LETTER DTD 2/21/78

1. THE AMERICAN INDONESIAN CHAMBER OF COMMERCE (AICC) HAS
TAKEN ON AS A MAJOR PROJECT A STUDY OF THE IMPEDIMENTS TO
IMPROVED US-INDONESIAN TRADE/INVESTMENT CLIMATE AND
EFFECTIVE FOREIGN BUSINESS OPERATIONS IN INDONESIA OF THE
MANIFOLD DISPUTES, UNRESOLVED AND OFTEN UNRESOLVABLE,
BETWEEN U.S. AND INDONESIAN ENTITIES. AICC HAS PRESENTED
THE DEPARTMENT WITH ITS FULL OUTLINE OF THE PROBLEM,
POUCHED TO THE EMBASSY UNDER TRANSMITTAL (A). THESE
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PAPERS HAVE BEEN UNDER REVIEW IN WASHINGTON AND JAKARTA,
AND WERE DISCUSSED WITH E/C COUNSELOR IN THE DEPARTMENT
AND WITH AICC IN NEW YORK. A PROVISIONAL CONCENSUS WAS
REACHED THAT IMPROVED DISPUTE SETTLEMENT IS A TOPIC OF
MAJOR IMPORTANCE IN ESTABLISHING A MORE FAVORABLE
INVESTMENT/TRADE CLIMATE AND IS THEREFORE OF SUBSTANTIAL
IMPORTANCE THAT WE COOPERATE EFFECTIVELY WITH THE AICC

STUDY. THE EMBASSY HAS NOTED IN REF (C) THAT IT HAD NOT

BEEN FULLY AWARE OF THE SEVERITY OF THE PROBLEM, A FURTHER INCENTIVE NOW FOR A MORE ACTIVE ROLE IN SEEKING SOLUTIONS WITH THE GOI.

2. WHILE KEEPING THE APPROPRIATE BALANCE WITH OTHER ASPECTS OF BUSINESS RELATIONS, IT IS OUR VIEW THAT THE EMBASSY SHOULD EMBARK UPON AN EARLY AND CONCERTED EFFORT TO LET VARIOUS ELEMENTS OF THE INDONESIAN GOVERNMENT KNOW OF OUR SERIOUS CONCERN AT THIS COMPLEX OF PROBLEMS.

3. AT THE PRESENT TIME THE FOLLOWING THREE STEPS ARE RECOMMENDED TO BE UNDERTAKEN IN THE NEAR FUTURE, IN CONCERT AND COOPERATION WITH THE AMCHAM.

A. INDONESIAN NATIONAL BOARD OF ARBITRATION: EMBASSY IS REQUESTED AT AN EARLY DATE TO MAKE CONTACT WITH THE OFFICERS OF THE NEW BOARD OF ARBITRATION, TO EXPLORE ITS STATUTES, GOALS AND METHODS OF OPERATIONS, RELATIONSHIP TO COURTS FOR ENFORCEMENT. THE EMBASSY SHOULD ASCERTAIN WHETHER AND IN WHAT WAY THE ARBITRATION BOARD MIGHT BE OR BECOME AN INSTRUMENT FOR THE SETTLEMENT OF DISPUTES WITH U.S. FIRMS. WE ARE AWARE OF A VIEW THAT THE BOARD WILL NOT OR MAY NOT CONSIDER INTERNATIONAL DISPUTES DESPITE THE FACT THAT ARTICLE 1 OF THE STATUTE CLEARLY PROVIDES LIMITED OFFICIAL USE

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FOR CONSIDERATION OF SUCH DISPUTES. THE DEPARTMENT CONSIDERS THAT THE INITIAL CONTACT WITH THE NEW BOARD MIGHT BE THE BEGINNING OF A MUTUALLY ADVANTAGEOUS RELATIONSHIP WITH THE EMBASSY AND U.S. BUSINESS COMMUNITY OVER TIME. INTER ALIA THE EMBASSY COULD OFFER TO SECURE FULLER INFORMATION ON HOW ARBITRATION INSTITUTIONS OPERATE IN THE U.S. WITH THE POSSIBILITY OF INFORMATIONAL TOURS OF THE U.S. AT SOME LATER DATE.

THE DEPARTMENT WOULD APPRECIATE A BRIEF BUT COMPREHENSIVE REPORT AND EVALUATION ON THE NEW BOARD OF ARBITRATION BY AIRGRAM WITHIN A FEW WEEKS. IF AMBASSADOR MASTERS IS PLANNING TO MEET WITH THE AICC IN NEW YORK DURING CONSULTATIONS, IT WOULD BE HELPFUL TO HAVE DEVELOPED SOME OF THIS INFORMATION FOR DISCUSSION PRIOR TO THE VISIT.

B. GENEVA AND NEW YORK CONVENTIONS ON ARBITRAL AWARDS: THE EMBASSY IS REQUESTED TO ATTEMPT TO CLARIFY THE GOI'S POSITION ON ITS RECOGNITION AND ACCESSION TO THESE TWO INTERNATIONAL CONVENTIONS. SO FAR AS WE ARE AWARE THESE CONVENTIONS HAVE NOT BEEN DISCUSSED RECENTLY WITH THE GOI.

A CAREFULLY PREPARED DISCUSSION OF THE PROBLEMS AND ISSUES

IN SETTLEMENT OF DISPUTES SHOULD BE CARRIED OUT WITH APPROPRIATE GOI OFFICIALS IN THE MFA AND/OR THE DEPARTMENT OF JUSTICE, OR ELSEWHERE IF JUDGED APPROPRIATE.

C. DISCUSSION ON THE INVESTMENT CLIMATE: THE EMBASSY HAS DISCUSSIONS FROM TIME TO TIME WITH HIGH OFFICIALS IN BKPM, AND WITH MINISTER SOHOED AND OTHERS PARTICULARLY INTERESTED IN IMPROVING THE INVESTMENT CLIMATE. IN THE FUTURE SUCH CONVERSATIONS SHOULD ALSO CONTAIN REMINDERS, AND REMONSTRANCE THAT UNRESOLVED DISPUTES ARE A SIGNIFICANT ELEMENT IN THE LESS THAN IDEAL REPUTATION THAT INDONESIA NOW HAS IN THE U.S. REFERENCE TO INDONESIAN LIMITED OFFICIAL USE

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MEMBERSHIP IN INTERNATIONAL CENTER FOR THE SETTLEMENT OF INVESTMENT DISPUTES (ICSID) MAY BE HELPFUL IN THIS CONTEXT. OFFERS TO ASSIST WITH FULLER INFORMATION ON U.S. AND INTERNATIONAL PRACTICES SHOULD BE MADE WHEREVER APPROPRIATE. FULL REPORTS ON ALL DISCUSSIONS SHOULD BE FORWARDED FOR SHARING WITH THE AICC AS APPROPRIATE.

4. FOR OUR PART WE ARE SEARCHING THE DEPARTMENT'S FILES AND CONSULTING WITH THE U.S. C OF C TO LOCATE CASE HISTORIES AND EXPERIENCE IN OTHER LDC'S WHICH MIGHT BE USEFUL AS A BACKGROUND FOR EMBASSY-U.S. PRIVATE SECTOR INITIATIVES WITH THE GOI.

5. THE DEPARTMENT WOULD MUCH APPRECIATE ANY FURTHER DATA AND VIEWS OF THE U.S. BUSINESS COMMUNITY IN JAKARTA WHICH BEAR ON THIS ISSUE AND MIGHT HELP US IN THE LONG RUN TO HAVE SOME INFLUENCE ON THE GOI ON THESE MATTERS.

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